IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 16132 of 2006()

AGAINST THE ORDER DATED / / IN EP 34/05 IN OS.73/1993 of SUB COURT,KATTAPPANA

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PETITIONER:

K.V.JOHNY, S/O.VARGHESE,
KUMARAPPILLIL HOUSE, ALAKODE VILLAGE,
THODUPUZHA TALUK,
(WORKING AT THE IDUKKI DISTRICT CO-OPERATIVE BANK).

BY ADV. SRI.P.V.BABY

RESPONDENTS:

MATHEW, S/O.THOMAS,
KURUVANTHANATH HOUSE,
VALLAKKADAVU KARA, KATTAPPANA VILLAGE,
UDUMPANCHOLA TALUK,
(PRESENTLY AT KOLANI KARA,
THODUPUZHA).

BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.SAVIO JOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 16132/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT IN OS. NO.73/1993 DT.31.1.1996 OF THE SUB COURT, KATTAPPANA.

EXT.P2:- COPY OF THE DECREE IN OS. NO.73/1993 DT.31.3.1996 IF THE SUB COURT, KATTAPPANA.

EXT.P3:- COPY OF THE ORDER DT.11.12.96 IN CMP. NO.5096/96 IN AS. NO.851/96 OF THIS HONOURABLE COURT.

EXT.P4:- COPY OF THE OBJECTION DT.5.10.05 FILEDBY THE PETITIONER IN EP.34/05 IN OS. 73/93 ON THE FILE OF THE SUB COURT, KATTAPPANA.

EXT.P5:- COPY OF THE OF EA NO.203/05 IN EP.34/05 DT.25.10.05 FILE BY THE RESPONDENT BEFORE THE SUB COURT, KATTAPPANA.

EXT.P6:- COPY OF THE OBJECTION DT.2.12.2005 FILED BY THE PETITIONER IN EXT.P5.

E.XT.P7:- COPY OF THE RULE 37 NOTICE IN EP. 34/05 FILED BY THE RESPONDENT BEFORE THE SUB COURT, KATTAPPANA.

EXT.P8:- COPY OF THE OBJECTION DT.10.1.06 IN EXT.P7 FILED BY THE PETITIONER.

EXT.P9:- COPY OF THE APPLICATION FOR REVIEW ALONG WITH AFFIDAVIT DT 12.1.06 FILED BY THE PETITIONER IN EP. 34/05 IN OS.73/93 BEFORE THE SUB COURT, KATTAPPANA.

EXT.P10:- COPY OF THE APPLICATION FOR ADVANCE THE CASE ALONG WITH AFFIDAVIT DT.12.1.06 FILED BY THE PETITIONER IN EP. 34/05 IN OS. NO.73/93 BEFORE THE SUB COURT , KATTAPPANA.

EXT.P11:- COPY OF THE JUDGMENT IN WP(C) NO.2550/06 DT.13..2.06 OF THIS HONOURABLE COURT.

EXT.P12:- COPY OF THE ORDER DT.6.6.06 IN EP. NP.34/05 IN OS. NO.73/93 ON THE FILE OF THE SUB COUR , KATTAPPANA.

/TRUE COPY/

M.SASIDHARAN NAMBIAR, J.

W.P.C.NO.16132 OF 2006 (U)

Dated this the 20 th day of December, 2006.

JUDGMENT

Petitioner is judgment debtor and respondent the decree holder. Petitioner is challenging Ext.P12 order where under his arrest was ordered by the executing court. Ext.P10 application was filed by petitioner contending that though the case was posted for return of Rule 37 notice, because of mistake committed by the clerk of the advocate appearing for petitioner, when the case was called, there was no representation and an order of arrest was passed. Petitioner filed a petition to review the order. Learned Sub Judge dismissed the application. After passing the order of arrest, challenging the decree and judgment, petitioner filed A.S.851/96 before this court. As per order in C.M.P.5096/96, this court passed an order of stay on condition that petitioner has to deposit cost portion of the decree and furnish security for the decree amount within one month from 11.12.96. Petitioner was also permitted to offer the property

under attachment as security. According to petitioner, the period was subsequently extended and he had produced a bond before executing court, but due to the shifting of the court, it was not found when the E.P was taken up.

2. As Ext.P12 order does not show that before passing the order of arrest, learned sub Judge considered the question whether petitioner has sufficient means and he willfully neglected to pay the amount, Ext.P12 order is quashed. Executing court is directed to pass appropriate order in the execution petition in accordance with law. Learned Sub Judge has to see whether the conditions as provided under Ext.P12 order of the court was complied with and if so whether the order of stay of execution is subsisting. If there is an order of stay, the executing court is not entitled to proceed further, before disposal of the appeal.

M.SASIDHARAN NAMBIAR,
JUDGE.

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